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DAVID WATKINS STAFF DIRECTOR

U.S. House of Representatives

Committee on Natural Resources Washington, DC 20515

August 14, 2020

The Honorable David Bernhardt Secretary U.S. Department of the Interior 1849 C Street NW Washington, D.C. 20240

Dear Secretary Bernhardt:

We write to better understand the withholding of certain documents from public release prior to your confirmation as Secretary of the Department of the Interior (DOI). As you know, DOI's Office of Inspector General (OIG) recently released a report¹ showing that DOI staff were unapologetic about withholding over 250 pages of documents that had been requested through the Freedom of Information Act (FOIA). Some of the documents were released after your confirmation; 38 pages remain unreleased.

The OIG report found that, shortly after you were nominated on February 4, 2019, then Counselor to the Secretary Hubbel Relat directed attorney-advisors in the Office of the Solicitor to withhold for further review any documents addressed to, sent from, or referring to you. The documents in question were subject to a 2018 FOIA litigation settlement agreement that required DOI "to review 1,500 pages of potentially responsive records per month and release the responsive documents."

Although Mr. Relat gave the direction, the report shows that DOI Solicitor Daniel Jorjani now claims ownership of this decision. This directly contradicts his testimony before the Senate Energy and Natural Resources Committee in which he stated, "I, myself, don't review FOIAs or make determinations."²

This is not the only evidence pointing to documents being unduly withheld prior to your confirmation. The House Committee on Natural Resources obtained an email dated March 14, 2019, that was sent from DOI's Office of the Executive Secretariat to other employees at DOI, the

¹ Office of Inspector General, U.S. Department of the Interior, ALLEGED INTERFERENCE IN FOIA LITIGATION PROCESS, (August 11, 2020),

https://www.doioig.gov/sites/doioig.gov/files/WebRedacted AllegedFOIAInterference.pdf.

² U.S. Senate Committee on Energy and Natural Resources, Full Committee Hearing to Consider Various Nominations, (May 2, 2019), https://www.energy.senate.gov/public/index.cfm/2019/5/full-committee-nominations-hearing

National Park Service, and the U.S. Fish and Wildlife Service that said, "Until I get formal written direction, I am asking that any correspondence being sent to any Senator as well as Representative Grijalva NOT be sent until you have further direction. This includes letters sent by Senators to regions, states, etc." Your Senate confirmation hearing date was publicly announced the next day.

A follow-up email dated March 21, 2019, stated, "Anything going to the Senate or to Representative Grijalva, regardless of signature level, MUST BE REVIEWED AND SURNAMED BY JOHN TANNER ([then] Director of the Office of Congressional and Legislative Affairs) AND GREGG RENKES ([then] Director of the Office of Policy Analysis) here at DOI." Mr. Tanner and Mr. Renkes were the two political appointees in charge of facilitating your Senate confirmation.

After the third hearing in which Chair Grijalva asked the DOI witness to explain the impetus and rationale for these emails, DOI's Office of Congressional and Legislative Affairs finally answered with a follow-up email in which they blamed career staff who would not have had authority to make such a decision. DOI refused to identify the person who directed career staff to send the email.

The OIG report and these emails raise serious questions about the extent to which DOI wrongfully withheld information necessary for the Senate and the American people to make a fully informed judgment about your appointment to be Secretary of the Interior.

To assist our oversight of these issues, please provide an unredacted copy of all 253 pages of documents identified by the OIG that were withheld from release, including the 38 pages that are still "under review by the Government" by August 28, 2020. Although some of the pages have been released to an unidentified recipient, the specific documents that were withheld are unknown. Please note that due to the increased risks presented by the ongoing pandemic, the attached instructions have been revised to require electronic delivery of documents. You may contact Vic Edgerton with any questions about this request. Thank you for your attention to this matter.

Sincerely,

Raúl M. Grijalva

Chair

House Committee on Natural Resources

Ron Wyden

Ranking Member

Subcommittee on Public Lands, Forests, and

Ron Wyden

Mining

Senate Committee on Energy & Natural

Resource

Responding to Committee Document Requests

In responding to document requests from the Committee on Natural Resources, please apply the instructions and definitions set forth below:

Instructions

- 1. In complying with the request, you should produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy, or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data, or information should not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.
- 2. In the event that any entity, organization, or individual denoted in this request has been, or is currently, known by any other name than that herein denoted, the request should be read also to include them under that alternative identification.
- 3. Documents must be provided in electronic form (i.e., memory stick, thumb drive, or internet-based). Documents produced should also be organized, identified, and indexed electronically. Documents should be produced in their native file format. For example, emails from Microsoft Outlook should have a ".pst" file extension, Excel files should have an ".xls_" or similar extension, and Microsoft Word documents should have a ".doc_" extension. Consult with the Committee to determine the appropriate format in which to produce the information.
- 4. Each document produced should be produced in a form that renders the document capable of being copied.
- 5. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, or folder transmitted through the internet is produced, each should contain an index describing its contents.
- 6. Documents produced in response to this request should be produced together with copies of file labels, dividers or identifying markers with which they were associated when this request was issued. To the extent that documents were not stored with file labels, dividers, or identifying markers, they should be organized into separate folders by subject matter prior to production.
- 7. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.
- 8. It shall not be a basis for refusal to produce documents that any other person or entity also possesses a non-identical or identical copy of the same documents.

- 9. If compliance with the request cannot be made in full, compliance should be made to the extent possible and should include an explanation of why full compliance is not possible.
- 10. In the event that any document or part of a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document or part of a document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
- 11. If any document responsive to this request was, but no longer is, in your possession, custody, or control, you should identify the document (stating its date, author, subject and recipients) and explain the circumstances by which the document ceased to be in your possession, custody, or control.
- 12. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.
- 13. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data, or information not produced because it has not been located or discovered by the return date should be produced immediately upon location or discovery subsequent thereto.
- 14. All documents should be Bates-stamped sequentially and produced sequentially.
- 15. Documents produced to the Committee in response to this request should be delivered to majority staff in Room 1324 of the Longworth House Office Building or directly through the internet.

Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone calls, text messages, MMS or SMS messages, other mobile-to-mobile messages, instant messages or online chat messages, meetings or other communications, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices

thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, voice mails, microfiche, microfilm, videotape, recordings and motion pictures), and electronic and mechanical records or representations of any kind (including, without limitation, tapes, cassettes, disks, computer server files, computer hard drive files, CDs, DVDs, memory sticks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term

- 2. The term "documents in your possession, custody, or control" means (a) documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, or representatives acting on your behalf; (b) documents that you have a legal right to obtain, that you have a right to copy, or to which you have access; and (c) documents that you have placed in the temporary possession, custody, or control of any third party.
- 3. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, facsimile, mail, e-mail (desktop or mobile device), text message, MMS or SMS message, other mobile-to-mobile message, instant message or online chat, telexes, releases, personal delivery, or otherwise.
- 4. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
- 5. The terms "**person**" or "**persons**" means natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof.
- 6. The term "identify," when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
- 7. The terms **"referring or relating,"** with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is in any manner whatsoever pertinent to that subject.
- 8. The term **"employee"** means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.